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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of

Implementation of Section 207 of the
Telecommunications Act of 1996

Restrictions on Over-the-Air
Reception Devices: Television Broadcast
and Multichannel Multipoint Distribution
Service

CS Docket No. 96-83
FCC 96-151

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COMMENTS OF THE EVERMAY COMMUNITY ASSOCIATION

I. Introduction

Pursuant to the Notice of Proposed Rulemaking released April 4, 1996, in the above-specified proceeding, the Evermay Community Association ("ECA") of McLean, Virginia, submits the following Comments concerning a proposed rule in implementation of Section 207 of the Telecommunications Act of 1996 as it relates to television broadcast service ("TVBS") and multichannel multipoint distribution service ("MMDS").

The ECA is an unincorporated, non-profit organization representing the owners and residents of Evermay, a community of 164 individually-owned, single-family homes constructed entirely by a single builder. Upon completion of construction, the builder formally assigned responsibility for enforcement of the Evermay Restrictive Covenants to ECA. Since accepting that responsibility about ten years ago, ECA has diligently enforced these covenants which, inter alia, deal with the erection of structures, external improvements and the placement and type of permissible fences. ECA's basic objective is to maintain the community as an attractive, desirable place to live in the interest of all of its residents and to preserve property values.

We believe that such associations typically make major contributions to the quality of life in their communities, including building harmonious relations between neighbors, and that the Commission should give greater deference, in the Proposed Rule, to the positive roles they most often play.

II. Discussion

The ECA will focus and elaborate herein on aspects of the Proposed Rule that are of particular concern to homeowner associations like ECA, in communities comprised entirely or almost entirely of individually-owned, single-family detached homes, with little or no common property.

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We make the following key points:

We interpret this Proposed Rule to mean that association restrictions on TVBS and MMDS receiving device installations will not be entirely precluded. Community associations will still be able to enforce restrictions "to the extent that" if one part of a restriction is preempted by the Proposed Rule, the other sections of the restriction remain in effect.

In the Proposed Rule, the word "impair" is not defined. Since there is no clear definition in the regulation, its interpretation will be very difficult and contentious. We suggest the following interpretation of the word "impair": a private restriction "impairs" access to TVBS or MMDS service if it: (1) precludes installation of TVBS or MMDS receiving devices, cabling and antennas (including support poles if required) through reasonable means or (2) materially increases the cost of installation of such equipment. (A definition of the word "materially" is suggested below.)

If there is a reasonable way in which a TVBS or MMDS installation can be made in compliance with existing architectural controls, owners can be required to comply. The association should preserve the right to enforce reasonable installation rules so long as enforcement does not impair access to service.

We recognize the mandate in the Telecommunications Act of 1996 that a viewer's ability to receive TVBS or MMDS services must not be impaired, and we take no issue with that. There are, however, many reasonable aspects of architectural control that might be implemented by a community association that would not jeopardize that objective. Requiring that receiving antennas be placed in back yards rather than in front yards where reception is possible in both locations is one example. And there may well be other actions that could be taken in specific situations that would minimize any negative impacts. The limits of such actions by community associations should be what is reasonable and what does not materially increase the cost of installation.

ECA believes that these limits would leave substantial room for community associations to work with individuals wanting to receive TVBS or MMDS services, with the objective of maintaining aesthetic and property values for all residents. For example, a community's architectural requirement might include the following language:

The Board, upon request for approval of a TVBS or MMDS receiving installation will waive its requirements generally applicable to antennas and structures if it can


be shown that all feasible means to preclude or, if not possible, to minimize visibility to neighbors and the public have been considered and that reasonable steps, if available, to reduce visibility to a minimum will be taken (i.e., actions with additional costs, if any, not exceeding 25% of the total cost of the antenna, support structure, other material and installation labor).

In this example, the 25% cost limitation was determined subjectively on the basis of what seems reasonable; the specific limit is, of course, open to other views on the subject.

III. Recommendation

ECA recommends that the following language be added to the language in the Proposed Rule:

"Impair" means any requirement that: (1) precludes reception of TVBS or MMDS services through reasonable means or (2) materially increases the cost of installation of such equipment, i.e., by an amount exceeding 25% of the total cost of the antenna, support pole if required, other material and installation labor. Subject to this limitation, community or homeowner associations or other nongovernmental organizations with architectural controls may enforce reasonable installation requirements to protect and enhance aesthetic and other common interests of the community.



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